

1985

# Cornish Town v. Koller : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

William Fillmore; Attorney for Plaintiff.

George W. Preston; Harris, Preston, Gutke & Chambers; Attorney for Defendants .

---

## Recommended Citation

Brief of Appellant, *Cornish Town v. Koller*, No. 198519981.00 (Utah Supreme Court, 1985).

[https://digitalcommons.law.byu.edu/byu\\_sc1/637](https://digitalcommons.law.byu.edu/byu_sc1/637)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

**BRIEF**

S9  
DOCKET NO. 1985/19981  
IN THE SUPREME COURT OF THE STATE OF UTAH

---

CORNISH TOWN, A Utah Municipal  
Corporation

\*  
\*

Plaintiff/Respondent

\*

vs.

\*

DEFENDANTS' AND  
APPELLANTS' BRIEF

EVAN O. KOLLER and MARLENE B.  
KOLLER, husband and wife

\*  
\*

No: 19981

Defendants/Appellants

\*

---

APPEAL FROM A JUDGMENT OF THE FIRST JUDICIAL DISTRICT  
COURT IN AND FOR CACHE COUNTY, STATE OF UTAH  
The Honorable VeNoy Christoffersen presiding

---

Mr. William Fillmore, Esquire  
55 West Center Street  
P. O. Box 525  
Logan, Utah 84321  
Telephone (801) 752-1551  
Attorney for Plaintiff and  
Respondent

Mr. George W. Preston, Esquire  
HARRIS, PRESTON, GUTKE & CHAMBERS  
31 Federal Avenue  
Logan, Utah 84321  
Telephone (801) 752-3551  
Attorney for Defendants and  
Appellants

FEB 4 1985

---

Clerk Supreme Court Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

---

CORNISH TOWN, A Utah Municipal \*  
Corporation \*

Plaintiff/Respondent \*

vs. \*

DEFENDANTS' AND  
APPELLANTS' BRIEF

EVAN O. KOLLER and MARLENE B. \*  
KOLLER, husband and wife \*

No: 19981

Defendants/Appellants \*

---

APPEAL FROM A JUDGMENT OF THE FIRST JUDICIAL DISTRICT  
COURT IN AND FOR CACHE COUNTY, STATE OF UTAH  
The Honorable VeNoy Christoffersen presiding

---

Mr. William Fillmore, Esquire  
55 West Center Street  
P. O. Box 525  
Logan, Utah 84321  
Telephone (801) 752-1551  
Attorney for Plaintiff and  
Respondent

Mr. George W. Preston, Esquire  
HARRIS, PRESTON, GUTKE & CHAMBERS  
31 Federal Avenue  
Logan, Utah 84321  
Telephone (801) 752-3551  
Attorney for Defendants and  
Appellants

II. TABLE OF CONTENTS

	<u>Page</u>
I. List of all Parties.....	0
(See caption)	
II. Table of Contents.....	1
III. Table of Authorities.....	2
IV. Statement of Issues Presented for Appeal.....	3
V. Constitutional Issues, Statutes, Ordinances (None) .....	3
VI. Statement of the Case.....	3
VII. Summary of Arguments.....	7
VIII. Arguments.....	8
Point I .....	8
Point II .....	10
Point III .....	12
IX. Conclusion.....	14

### III. TABLE OF AUTHORITIES

	<u>Page</u>
<u>STATUTES</u>	
UCA 73-1-10 .....	9
UCA 73-1-11 .....	9
<u>AUTHORITIES</u>	
93 CJS Waters 1058 .....	9
<u>CASES</u>	
<u>Anderson v. Hurst</u> , 120 F.Supp. 850.....	11
<u>Bamb v. McIntyre</u> , C.C.Ca 277 F.2d 647.....	11
<u>Big Cottonwood Lower Canal Company v. Cook</u> , (Utah 1929) 274 P. 454, 73 Ut. 393.....	13, 14
<u>Burton v. United States</u> , 507 P.2d 710.....	9
<u>Duus v. Town of Ephrata</u> , (Wash. 1942) 128 P.2d 510...	9
<u>Hartman v. Potter</u> , (Utah, 1979) 596 P.2d 653.....	11
<u>Salt Lake City v. McFarland</u> , (Utah 1954) 265 P.2d 626, 1 Ut2d 257.....	9

IV. STATEMENT OF ISSUES PRESENTED FOR REVIEW

POINT I

DID THE TRIAL COURT ERR IN CHANGING KOLLERS' POINT OF CONNECTION WITH THE CORNISH TOWN WATER SUPPLY.

POINT II

DID THE COURT ERR IN DEFINING THE PEARSON SPRING AS COLLECTION OF SPRINGS IN THE VICINITY OF THE ORIGINAL PEARSON SPRING.

POINT III

DID THE TRIAL COURT ERR IN FAILING TO GRANT KOLLERS A JUDGMENT ON DEFENDANTS' COUNTERCLAIM FOR THE LABOR AND MATERIALS IN REPLACING THE PIPE FROM THE CORNISH TOWN WATER SUPPLY TO THE KOLLER HOME.

V. CONSTITUTIONAL ISSUES, STATUTES, ORDINANCES: (None)

VI. STATEMENT OF THE CASE.

A) Nature of the Case. This is an action by Cornish Town to determine the ownership interests of the parties in two springs situated in Cache County, Utah and for a decree of the court determining Plaintiff's interest if any in right-of-ways leading to the springs. Defendants' counterclaim seeking judgment for the replacement costs of a water pipe to the Defendants' residence.

B) Course of Proceedings. The matter was tried before the Honorable VeNoy Christoffersen upon Plaintiff's complaint and Defendants' counterclaim.

C) Disposition in the Trial Court. The Trial Court ruled as follows:

(1) Cornish was only entitled to the right-of-ways set forth in Plaintiff's deeds.

(2) Cornish failed to prove any prescriptive easements for other right-of-ways.

(3) Kollers' interest in Griffiths Spring to remain as set forth in Cornishs' deed.

(4) Pearson Spring was allocated as follows:

(a) 4/5 interest, Cornish, subject to the reservation in deed providing for culinary and domestic water that would flow through a 3/4 inch tap at a cement curb behind the Koller home.

(b) Source or supply of 3/4 inch reservation to be determined by Cornish.

(5) The Pearson Spring consists of several springs.

(6) Kollers' counterclaim was dismissed.

D) Statement of Facts

Plaintiff, Cornish Town is a small community situated in the Northwest corner of Cache County, Utah. It owns and operates its own culinary water system. The source of the municipal water consists of two springs, commonly known as Pearson Spring and Griffiths Spring, and a well drilled by Cornish Town several years prior to the commencement of this action. (See Exhibits 8, 13, 15, 16, 17, 18, 19, 21, and 22)

The Springs are situated upon the Defendants' property. (See Exhibits 3, 4) Cornish Town owns a 4/5 interest in the Pearson Spring by reason of a conveyance from the Pearson family to Cornish Town (See Exhibit 8) Defendant, Evan Koller owns a 1/5 interest in the spring by reason of a conveyance from Emma Marie Pearson Dobbs who did not convey water rights to Cornish. (See Ex. 6, 7 & 8)

The members of the Pearson family who conveyed a 4/5 interest in the water to Cornish reserved to themselves the following rights in the Spring: (Exhibit 8) (Appendix "A")

Grantors reserve the right to use water for human drinking and stock watering purposes. The use to be confined to a water flow through a 3/4 inch tap, and grantees agree to pipe the said water to the home of Lars Pearson for culinary and domestic purposes. All water to be measured through a culinary meter.

The words of conveyance in the instrument are as follows:

All the right, title and interest of the grantors in all water and water rights in and to one certain unnamed spring which arises at a point 800 feet South and 600 feet East of the Northwest corner of the Northwest Quarter of the Southwest Quarter of Section 8, Township 14 North Range One West of the Salt Lake Meridian.

The Defendants, Evan and Marlene Koller do not reside within the town of Cornish. However, pursuant to the grant in the deed (See Ex. 8), Cornish at one time installed a 1 1/2 inch "T" in the city's 4 inch line from Pearson Spring and thereafter piped the city water to the Pearson residence through a 1 inch iron pipe restricted at the point of the residence to a 3/4 inch "tap".

The water was used by the Pearson family until they sold the property to the Kollers. (See Exhibit 36) Thereafter the Kollers used the water from the tap for culinary and domestic purposes until the present time. (Tr. - 58) Between 1975 and 1979 (Tr. 59), Koller found both the quality (Tr. 55 - 62) and quantity (Tr. 79 - 82, 58) of the water to be seriously deficient. (Appendix "C") Koller realized the necessity of making repairs from Cornish's 4 inch line to his residence. (Tr. - 59) (Appendix "D") Cornish refused to make the repairs. (Tr.- 62) Koller inspected the 1



inch steel pipe and found it to be virtually plugged with corrosion. (Tr. - 69) (Appendix "D") After making a formal request to Cornish for restoration of the line, he set out to repair the line for himself prior to the advent of winter. (Tr. - 70) Differences arose between the parties and Cornish brought this action. (Appendix "E")

The Court in making Findings of Fact and Conclusions of Law agreed with a prior decision of the State Engineer's office with regards to the allocation of water and the priorities. (Exhibit 24).

The Court further found that the Defendants were entitled to receive culinary water from the city and that the "source was not restricted solely to the Pearson Spring". The Court found that Cornish was entitled to determine where the union with the Cornish line would be located and shall thereafter provide a pipe to a 3/4 inch tap at the home of the Defendants. (Finding No. 20) The Court further found that the "Pearson Spring water supply is not one single spring but may be composed of several springs."

From these Findings the Court concluded that the Defendants, Kollers were not appropriators of the tap water from Cornish Municipal water system but are the owners of a right to culinary water as evidenced by a grant in a deed dated the 2nd day of March, 1938 from Emma Pearson et al. The Court concluded that the grant to the Defendants in the deed was not restricted solely to the source of water of Pearson Spring. The Court further concluded that the Cornish is entitled to determine where the union will be with the Cornish line and to provide and pipe to a

3/4 inch tap to the home of the Kollers. (Oral Decision p.8, Feb. 23, 1983)

The Court further concluded that the Kollers were not entitled to judgment on the counterclaim for the costs of installation of the new pipe. It is from these findings and conclusions of law that the Defendant appeals.

#### VII. SUMMARY OF ARGUMENTS.

##### POINT I

THE TRIAL COURT ERRED IN FINDING THAT CORNISH HAD THE RIGHT TO DETERMINE THE POINT OF CONNECTION OF THE KOLLERS' CULINARY WATER LINE WITH THE CORNISH WATER SYSTEM.

Kollers derive their right to the culinary water from a reservation in a deed by the Kollers' predecessors in interest. They reserved the rights, not from the Cornish general water system, but from "one certain unnamed spring", now known as Pearson Spring, the use to be confined to a water flow through a 3/4" tap. Thus, Defendants' rights stem from the Pearson Spring and not to the general culinary water supply of Cornish which at times is unfit for human consumption.

##### POINT II

THE COURT ERRED IN DEFINING THE PEARSON SPRING AS NOT ONE SINGLE SPRING, BUT MAY BE COMPOSED OF SEVERAL SPRINGS.

The quit claim deed (Exhibit 8) granting Cornish their rights in the spring define it as follows:

"All right, title and interest of the grantors in all water and water rights in and to one certain unnamed spring which arises at a point 800 feet South and 600 feet East of the Northwest corner of a S.W. quarter of the S.W. quarter Section 8 T 14 N 1 East of the Salt Lake Base and Meridian. etc."

The Trial Court enlarged Cornish's water rights, rather than interpret them.

### POINT III

#### THE TRIAL COURT ERRED IN FAILING TO GRANT KOLLERS JUDGMENT ON THEIR COUNTERCLAIM.

The culinary water pipe leading to the Defendants' home became unserviceable. Defendants asked Cornish City to rebuild the system. Although the city fathers accepted, the city attorney refused indicating that the grant in the deed (Exhibit 8) was a one-time obligation which had been fulfilled and that no further obligation on the city existed. Defendants commenced construction. Plaintiff brought suit to halt construction and determine the parties rights. A provision in the deed provides that

"Grantee agrees to pipe the said water to the home of Lars Pearson for culinary and domestic purposes."

The Trial Court dismissed Defendants' counterclaim based upon the fact that there was no evidence that all of the pipe was unserviceable as Plaintiff's testimony was to the extent that only the top sections and the bottom sections were uncovered and were found to be unserviceable, not the whole pipe.

### XIII. ARGUMENTS.

#### POINT I

#### THE TRIAL COURT ERRED IN FINDING THAT CORNISH HAD THE RIGHT TO CHANGE THE POINT OF CONNECTION WITH THE TOWN TO DETERMINE THE POINT OF CONNECTION OF THE KOLLERS' CULINARY WATERLINE WITH THE CORNISH WATER SYSTEM.

The Defendants derive their rights to the culinary water from a reservation found in a quit claim deed (See Exhibit 8, Appendix A).

The deed conveys 4/5 of the Pearson Spring to the town of Cornish.

A reservation in the deed provides grantors as follows:

"Grantors reserve the right to use water for human drinking and stock water purposes. This use to be confined to a water flow through a 3/4" tap and grantee agrees to pipe the said water to the home of Lars Pearson for culinary and domestic purposes." (Emphasis ours)

Section 73-1-10 Utah Code Annotated provides the water rights shall be transferred by deed in substantially the same manner as real estate.

Where a grant of water rights contains reservations, that construction should be favored which gives practical effects to all the terms of the exception.

The grantee in such a case is bound to do nothing to obstruct or interfere with the rights reserved. (93 CJS Waters 1058). Utah Code Annotated, 73-1-11 provides in part as follows:

A right to the use of water pertinent to land shall pass to the grantee of such land.... provided, that any such right to the use of water or any part thereof may be reserved by the grantor in any such conveyance by making such reservation in express terms in such conveyance or it may be separately conveyed.

A reservation was defined in the case of Burton v. United States, Utah, 507 P.2d 710 as follows:

An exception excludes from the grant the property or estate therein described. If a conveyance contains a reservation, the entire property or estate described passes to the grantee, subject to the right, estate or easement reserved. The reservation creates a new right issuing out of the property granted, which did not exist as an independent right before the grant.

Salt Lake City v. McFarland, (Utah 1954) 265 P.2d 626. Duus v.

Town of Ephrata, (Wash. 1942) 128 P.2d 510. It therefore becomes

obvious that Evan Koller, a successor to the Pearsons, was the owner of a reserved right from the Pearson Spring.

By virtue of the deed Koller could not have claimed an interest in the general water rights in the Cornish Town nor could Koller have forced Cornish to supply him water from the general city system in the event the Pearson Spring would have ceased to exist. The reservation was from the Pearson Spring and not from the general city water system.

The Town of Cornish has the obligation to pipe culinary quality water from the Pearson Spring to the Koller home, not from the city water system to the Koller home.

The Court's Ruling which Kollers claim is made in error essentially grants to the Kollers a water right in the general city system in lieu of Defendants' rights in the Pearson Spring water.

Why does Plaintiff object to the substitution by the Court in controvention to the quit claim deed? See Appendix B attached hereto.

## POINT II

### THE COURT ERRED IN DEFINING PEARSON SPRING NOT AS ONE SINGLE SPRING BUT MAY BE COMPOSED OF SEVERAL SPRINGS.

The deed conveying an interest in Pearson spring from the Pearson family to Cornish Town (see Appendix A) contained language as follows:

"All right, title and interest of the grantors in all water and water rights in and to one certain unnamed spring... "

The word "one" can be distinguished from other words having plural meanings.

One is defined as a single thing in Webster's Dictionary. The word "certain" is defined in words and phrases as, "fixed, stated, precise, exact." It also has the meaning of "one". It is further described as being precise, definite and ascertained. (See Anderson v. Hurst, 120 F.Supp. 850; Bamb v. McIntyre, C.C.Ca 277 F.2d 647.

The Court's ruling from the bench found as follows: (Court's oral decision, pg. 9)

Further find that the Spring water supply is governed by the collection basin - - or not just the box but the basin outlined in blue by Dr. Hansen as to where the water source is and is not one single spring but may be composed of several springs. (This finding was set forth in paragraph 21 of the Findings of Fact, paragraph 5 of the Conclusions of Law and paragraph 11 of the Judgment.)

The effect of the Trial Court's finding was to broaden substantially, without supporting evidence, Cornish's claim to a drainage area.

Deeds are to be construed like other written instruments and where a deed is plain and ambiguous, parole evidence is not admissible to vary its terms. It is the Court's duty to construe a deed as it is written, and in the final analysis, each instrument must be construed in the light of its own language and peculiar facts. Hartman v. Potter, 596 P.2d 653 (Utah, 1979).

It is reasonable, therefore, to conclude that Cornish's interest is not in a drainage area or multiple springs but consists of a 4/5 ownership in one certain unnamed spring.

The Defendants request accordingly a modification of the Findings of Fact and Conclusions of Law and Judgment.

### POINT III

#### THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANTS' JUDGMENT ON THEIR COUNTERCLAIM.

The Trial Court found in the Court's oral decision on February 23, 1983, page 11, that Defendants' counterclaim should not be granted by reason of the fact that Defendants failed to prove that the entire length of the pipe was unserviceable. Following the Defendants' inspection of the top and bottom and finding each to be clogged and badly deteriorated, the Defendants should have replaced those sections only and charged that amount to Cornish.

Cornish's obligation as found in the quit claim deed, see Appendix A, is to pipe "the said water," to the home of Lars Pearson for culinary and domestic purposes.

Mr. Koller testified (Koller Tr. 64) that Paul McKnight city councilman, stated that Cornish would replace the water line. However, upon submission of the issue to their attorney, Mr. Brent Hoggan, Cornish advised that piping the water to the home of Lars Pearson was a one time project and that Cornish had no responsibility to replace the pipe after that. (Koller Tr. 62-64) (Appendix "E")

Just as the water right in the Pearson Spring owned by Cornish is a continuing right with Cornish, so is the obligation of Cornish to pipe the water to the Koller residence, a continuing obligation.

Evan Koller's replacement pipes eliminated the problem of air

locks and hydraulic hammering within the pipe and was a better constructed system. He also provided some storage of water for fire protection, filling sprayers for emergencies. (TR. 80 - 82)

The principle argument of Cornish is that with Kollers the new pipe has the ability to use a greater gallonage of water. An identical issue was raised in the case of Big Cottonwood Lower Canal Company v. Cook, (Utah, 1929) 274 P.2d 455 where this Court interpreted a reservation made by a grantor on 1½ acres of ground near the springs, holding the subsequent owner entitled to an unlimited quantity and time of use of the water. This court held as follows:

" 'Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state' This is a cardinal principle of the law of water rights. No claim is made that any of the waters of the spring were ever used on the land described in the reservation for any purpose other than irrigation thereof and the domestic uses of the owner. Therefore, the quantity necessary for such purposes must be the measure and limit of the Defendants' right."

Therefore, it is not the size of the pipe transmitting the water that is the criteria of use but the beneficial use derived from the reserved water. It is curious to note that Cornish has an overflow from their reservoir which flows frequently, however, Plaintiffs still object to Kollers' usage of the water for domestic and culinary purposes.

Kollers, at all times, complied with the provisions of the reservation. The new line was reduced to a 3/4 inch tap at the same point the old line was reduced to a 3/4 inch tap. There is no testimony of the use by the Kollers that falls outside of the



criteria established by the Court many years ago. In the quit claim deed set forth in Appendix "A" grantors described the real property which the water was appertenant to. That land is presently owned by Kollers. There is no restriction in the reservation as to the size, dimensions or construction of the pipeline from the Pearson Spring, and, therefore, Kollers' usage must be interpreted in light of the Big Cottonwood Lower Canal case. The Defendants are therefore entitled to judgment for the sum of \$3,269.73, and for the replacement of the pipe to their residence.

#### IX. CONCLUSION.

Reducing the Points on Appeal to the basic common denominator, Defendants' appeal centers around the interpretation of a quit claim deed given in 1938 by the Pearson family to Cornish. Re-reading of the deed found in Appendix A reveals as follows:

1. The Pearson family with the exception of a 1/5 interest granted to Cornish 4/5 of a spring located on land they didn't own.

2. The Spring itself is located in the Northwest quarter of the Southwest quarter of Section 8 which property was not owned by the Pearsons. But, the spring water was used in connection with the West half of the Southeast quarter of Section 8.

3. The Kollers acquired property surrounding the spring from parties other than the Pearson family. The clear import of the deed is that the Pearson grantors intended only to convey their rights in "one certain unnamed spring" and not other springs.

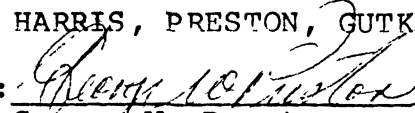
Just as the usage of the water is a continuing usage, so must Cornish's obligations be a continuing obligation to provide

the Kollers with culinary quality water to flow through a 3/4 inch tap at their residence. Cornish's failure to abide by the terms of the quit claim deed in maintaining culinary quality water from the Pearson Spring and providing it to the home violate the terms of the very deed by which they claim ownership of the water. The findings of fact, judgment and decree should be modified accordingly.

RESPECTFULLY SUBMITTED on this 1st day of February, 1985.

HARRIS, PRESTON, GUTKE & CHAMBERS

By:

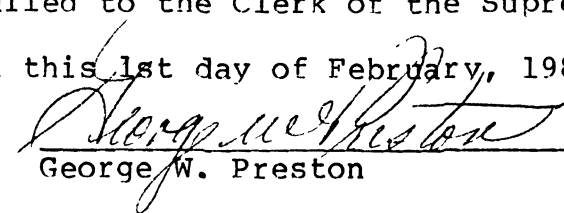
  
George W. Preston

Attorney for Defendants/Appellants  
Evan O. Koller & Marlene B. Koller

#### MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing DEFENDANTS'/APPELLANTS' BRIEF to the Plaintiff/Respondent's attorney, William Fillmore, P. O. Box 525, Logan, Utah 84321.

Fifteen (15) copies of the above and foregoing DEFENDANTS'/APPELLANTS' BRIEF have been mailed to the Clerk of the Supreme Court of the State of Utah, on this 1st day of February, 1985.

  
George W. Preston

(174064) ✓

BK 74 126 144 2/2008  
8

QUITCLAIM DEED.

EMMA PEARSON, LARS PEARSON and wife, Gladys M. Pearson, Randolph Pearson, Wesley Pearson, and Lawrence Pearson, Grantors, of Cornish, Cache County, State of Utah, hereby quitclaim to CORNISH TOWN, a Municipal Corporation of the State of Utah, Grantee, for the sum of ONE AND NO/100 DOLLARS, the following described tracts of land in Cache County, State of Utah, to-wit:

A right-of-way, of ingress and egress, including an easement for travel, and the right to construct, operate, and maintain water pipe lines with all accessories thereto, over the following described land, to-wit:

Commencing at the East Quarter corner of Section 17, in Township 14 North of Range One (1) West of the Salt Lake Base and Meridian, and running thence West 160 rods; thence North 20 feet; thence East 160 rods; thence South 20 feet to the place of beginning.

ALSO: All the right, title and interest of the Grantors in all water and water rights in and to one certain unnamed spring which arises at a point 800 feet South and 600 feet East of the Northwest corner of the Northwest Quarter of the Southwest Quarter of Section 8, Township 14 North of Range One West of the Salt Lake Meridian, which said water is now being used and has been used for more than forty years on the West half of the Southeast Quarter of Section 8, Township 14 North of Range One West of the Salt Lake Meridian.

TOGETHER with a right of way over the land of the grantors, including an easement for travel and the right to construct, operate and maintain water pipe lines with all accessories thereto, to carry said water from said spring to a reservoir, over the land described as follows:

A twenty (20) foot right of way over the Southeast Quarter of Section Eight (8), and the Northeast Quarter of Section 17, Township 14 North of Range One West of the Salt Lake Base and Meridian.

Grantors reserve the right to use water for human drinking and stock-watering purposes. This use to be confined to a water flow through a 3/4" tap, and grantee agrees to pipe the said water to the home of Lars Pearson, for culinary and domestic purposes. All water to be measured through a culinary meter.

WITNESS the hands of the Grantors this 2nd day of March, A.D. 1938.

Signed in the Presence of

Newel G. Daines

Emma Pearson  
Lars W. Pearson  
Gladys M. Pearson  
Randolph Pearson  
Wesley Pearson  
Lawrence Pearson

STATE OF UTAH       )  
COUNTY OF CACHE   ) SS.

On this 2nd day of March, A.D. 1938, before me a Notary Public in and for the said county and State personally appeared EMMA PEARSON, LARS PEARSON and wife, GLADYS M. PEARSON, RANDOLPH PEARSON,

A That's correct.

Q What is your principal objection to the town's water once it comes through the chlorination facility, the reservoir, and down the main line?

A Run that one past me again.

Q What is your objection to the town's water, once it gets through its chlorination facility and comes along the main line?

A In other words, objection to the water in the main line?

Q Yeah. What don't you like about it?

A Number one, the bacteria count has been bad coming out of the Pearson Spring area.

Q No, no, no, no. I'm talking about the water once it goes through the chlorination facility, once it's in the town's main line, out of the reservoir.

A Well, I'll get there in just one second.

Q I just want you to answer that question.

A The nitrate content is bad, thirdly the water you're pumping out of that well isn't fit for human consumption.

Q I want you to be a little more specific, Evan. Just answer my question. Once the water is in the town's main line running by your house.

A Yeah.

Q Okay? Specifically what don't you like about it?

A I'm trying to tell you.

Q No, you told me about what comes out of the Pearson Spring. Once it leaves the reservoir.

A Well, what's in the main line is a composite of all of this. It's a soup.

Q But something has happened to it; right? It's been chlorinated; right?

A Well, that's still worse.

Q In your opinion.

A Absolutely.

Q But the bacteria--

A I don't want chlorinated water.

Q But the bacteria count is down.

A Well, you might kill the bacteria, yeah, but all the rest of the stuff is there.

Q And the bacteria count is down once it gets in the main line. Necessarily.

A Their chlorinator isn't consistent. There are long periods of time when that isn't working.

Q Do you know that from personal information?

A Yes, I do.

Q How often is that?

A It varies.

Q Well, it's not very often, is it?

1           A     It's been quite often in the last few years.

2           Q     Well, answer this question: the bacteria count  
3 is lower typically once it gets through the chlorination  
4 facility; right?

5           A     I think, counselor, what you're after--

6           Q     No, just answer that question. Evan, I'm asking  
7 the questions. You answer them. Is the bacteria count  
8 lower typically once it leaves the chlorination facility  
9 than when it gets to your line? "Yes" or "no."

10          A     I can't answer that "yes" or "no." If the  
11 chlorinator is working it will be. If it's not working  
12 it won't be.

13          Q     Okay, that's a fair answer. Next question--

14          A     I thought that's what you wanted, I was trying  
15 to tell you.

16          Q     Next question: nitrate count. Typically when  
17 things are working is the nitrate count going to be lower  
18 or higher once it's in the town's main line that runs by  
19 your house?

20          A     It should be lower diluted with the well water.

21          Q     Right. And do you recall testifying in your  
22 deposition that you--really your own concern was taste?

23          A     Oh, no.

24          Q     You didn't like the chlorination and you didn't  
25 like the taste?

A That was your words. That's what you said. In other words all you were concerned with is taste. I don't like the taste, that's right. I don't like the arsenic, I don't like the high levels of flouride, I don't like the high levels of nitrate.

Q But you just testified the nitrate levels generally are lower; right?

A They may be lower but they're still going to be high.

Q Well, they may still be in there but it's better water with respect to nitrate values?

A They should be lower as long as you're diluting it with the stuff you're getting from the well.

Q Okay. What do you believe the meaning to be of the 1938 deed from Pearsons to Cornish wherein it states that they have an obligation to pipe the said water to the home of Lars Pearson for culinary and domestic purposes?

A I believe that they have an obligation to deliver to that homesite what can be gotten through a three quarter-inch tap at that point, culinary, potable grade water. If they do not do this off of the Pearson Springs source, I feel they do not have then any right in that spring, they have abrogated their side of the contract and, therefore, they no longer have right in that spring.

Q Okay. I really wasn't going to the quality.

1 That language where the deed refers to that the grantee is  
2 to pipe said water to the home of Lars Pearson for culinary  
3 and domestic purposes, in your mind does that mean pipe  
4 it to the house?

5 A To the homesite. Where the curb was, the shutoff  
6 valve, from there on it was Pearson's responsibility.

Q Good. And do you agree that that is limited  
to culinary and domestic purposes?

A Well, I can't tell you what the words--whatever  
is in the deed. The words that's in the deed.

What do you think they mean?

A Culinary and domestic, does that cover it?

Q It's in the deed. I'm just asking you how you  
interpret what that means. Would you like a copy of the  
deed?

A I have one.

Q It's exhibit 8 I believe, Judge.

MR. PRESTON: The Court has it there.

A Yes. Culinary and domestic purposes.

Q That's what is says, doesn't it?

A Yes.

Q What does that mean to you, culinary and domestic  
purposes?

A That means to me what people generally use tap  
water for: gardens, lawns, houses, sheds, stock, and those



1 an injunction granted, I never hooked up to the line, but  
2 the line was predominantly built prior to the court hearing.

3 Q You're talking about the four-inch line for the  
4 most part, then after that you had to create this little  
5 jog to the south and hook up to the old hookup?

6 A That's what we done after. That was done after  
7 the hearing.

8 MR. FILLMORE: Okay. No further questions.

9 REDIRECT EXAMINATION

10 BY MR. PRESTON:

11 Q How many people were in the Pearson family?  
12 Well, I guess that's--

13 MR. FILLMORE: I think that's in evidence.

14 Q There is an exhibit in evidence that shows the  
15 number of people in the Pearson family, mother and father  
16 and about six or seven or eight kids, weren't there?

17 A I think the exhibit was in the Emma and Lars  
18 Pearson family. But in the Lars Pearson and Gladys Pearson  
19 family I don't think there are any exhibits that I'm aware  
20 of. I don't recall for sure. I think they had about eight  
21 children.

22 Q How many people do you have currently living in  
23 this house?

24 A Well, that all depends whether the kids are home  
25 or whether they are off to school or where.

1 Q Presently how many people in that house?

2 A We have six children in our family. At this  
3 point three of them are married and have moved out.

4 Q So there's your wife and yourself and how many  
5 children residing in this house presently?

6 A There's my wife and two children residing there  
7 presently.

8 Q So that's four of you in the house?

9 A Yes.

10 Q You have gone into detail about how many toilets  
11 you have and sinks and showers and fountains and everything.  
12 You really don't use any more water out of those facilities  
13 combined than you would if you just have less facilities  
14 then?

15 A No.

16 Q Are you wasting the water of the city? Do you  
17 ever waste the water of the city, just turn it out and let  
18 it run down the road or anything like that?

19 A No. We don't--nothing like is going over the  
20 hill out of that reservoir over there.

21 Q One question. The question was about Asael Buttars  
22 saying that there was a road up here he circled on exhibit  
23 34, a circle which there is--there appears to be a circle  
24 and a three. He said that was the road leading to the  
25 ~~spring. is that the~~ road that you remember leading up the

APPENDIX "C"

1           A     Yes, our house water comes from this catch basin  
2 down through the land down to us.

3           Q     Was there any dye in your water that you observed?

4           A     Not that I could see.

5           Q     You've testified as to the Pearson Springs. Have  
6 you done anything with regards to the maintenance, upkeep  
7 of the spring area itself?

8           A     Yes.

9           Q     And would you describe when you first made any  
10 improvements or maintenance to that spring area?

11          A     We have tried to control the weeds. After we  
12 built our home in '75 I became concerned with the quality  
13 of water which we were drinking. I don't know how much  
14 detail you want me to go into on that.

15          Q     Let's hit the high spots.

16          A     But anyway I went up there one day and all of this  
17 water was running through the cattails and stinging nettles  
18 and everything else. Somebody had had that water dammed  
19 off and was running it into the catch basin, and that's what  
20 was coming down to our house and that's what we were drinking.  
21 There was dogs, there was cats, mice, muskrats, deer,  
22 pheasants, and everything else stomping around in that  
23 thing.

24                 I was upset and I called Willard Hill and he came  
25 up and looked at it and he said, "I'll get this straightened

APPENDIX "D"

1           A     Well, there's still water running out of there  
2 at this time.

3           Q     Is there water that's running and not being  
4 collected by the catch basin?

5           A     Yes.

6           Q     Where is that running?

7           A     Well, it's going down the hollow.

8           Q     And are you using the water out of Butler Hollow  
9 as you have used it in your catch basin and so on downstream?

10          A     Yes.

11          Q     Now when you built your house in 1975 did you  
12 attach onto the old original pipe?

13          A     Yes, we did.

14          Q     And when you attached onto that pipe there was  
15 a preexisting pipe there?

16          A     Yes.

17          Q     Was there a water meter?

18          A     No.

19          Q     What was the condition of that pipe?

20          A     That pipe came into a cement curb--I don't know,  
21 it's 18 inches, 24 inches in diameter, probably 3 feet long.  
22 It came into that. There was a shutoff valve, and that's  
23 all I recall. Come out of that. When we attached onto that  
24 pipe it was corroded in pretty badly with rust and barnicles  
25 and so forth.

1           Q     You attached on, and as time went on what happened  
2 with regards to your water supply?

3           A     Well, our water supply got to where our plumbing  
4 in our house wouldn't function. We have toilets which won't  
5 flood over. There's a line of toilets you can buy which you  
6 can't plug them up and get them to flood over onto the floor.  
7 We put that line of toilets in, but they have to have some  
8 line pressure in the line to get them to flush. They just  
9 won't work without a little bit of line pressure. Our  
10 toilets wouldn't function. Or our shower. If somebody was  
11 in the shower trying to shower and somebody outside turned  
12 on the water or somebody in the kitchen turned on the water  
13 or something, the shower went haywire. If Marlene was  
14 trying to wash in the house and I was out in the yard trying  
15 to do something with the water, trying to fill a spray rig  
16 or wash out an implement or something, her washer wouldn't  
17 function.

18                     She'd come out and wonder when I was going to get  
19 done so she could continue her washing. We just couldn't  
20 function there.

21           Q     What about fire protection there?

22           A     Oh, man, you couldn't put out a fire with that.  
23 Couldn't get enough water to do anything.

24           Q     Did you make an inspection of that line, the  
25 point where you connected on to it, an additional one?

1           A     Not after the one we first connected on. I knew  
2 what the problem was. The line had just corroded in until  
3 you just couldn't get water down there.

4           Q     Did you ever contact any of the city fathers of  
5 Cornish about this problem?

6           A     Yes.

7           Q     When did you first contact them?

8           A     It would be between '75 and '79. In there. We  
9 talked about replacing the line.

10          Q     Was the line ever replaced?

11          A     No.

12          Q     And what ultimately culminated in your replacement  
13 of the line in 1979? What brought this about?

14          A     Do you want me to go into this meeting over here?

15          Q     No, what fact in the home brought about the  
16 meeting that was over there? In other words, why did it  
17 come to a head?

18          A     Well, we wanted the spring area cleaned up so we  
19 had culinary water to drink. The coliform count was very  
20 high in the water which we were getting to drink. Also  
21 we had no line pressure. Our plumbing wouldn't function.

22          Q     Was this potable water that you can drink, that  
23 you were getting out of this line?

24          A     We were trying to drink it but it was--it's  
25 supposed to be potable water, I'll put it that way. It

APPENDIX "E"

1 Q All right. And who else was there?

2 A Well, I think Mike Turnipseed and people from the  
3 State Engineer's Department was there.

4 Q What was the topic of conversation at this meeting?

5 A Well, just prior to this meeting we had toured  
6 the spring area and looked it over and discussed the feasi-  
7 bility of redoing the spring area, and that was predominantly  
8 what the topic was about, was trying to bring that area  
9 up to state health standards.

10 Brent Hoggan argued in that meeting that he had  
11 no responsibility or Cornish had no responsibility to bring  
12 that up to state standards or that they had any responsibility  
13 to replace the line to my home so we could get some water.

14 We discussed the deed. I said the deed says they  
15 were to pipe the water to the home of Lars Pearson, and he  
16 says they did that. They piped that and that was the end  
17 of their responsibility.

18 Q I show you what has been marked for identification  
19 as Plaintiff's Exhibit 8. Can you identify that exhibit?

20 A Yes. This is different from the one which I had  
21 seen. This is a quitclaim deed.

22 Q Well, it's a copy though.

23 A The language is the same. I get my deed out of  
24 abstracts where I've got my copy. This one is evidently  
25 copied from somewhere else, probably the Courthouse, but--